



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R06-OAR-2021-0517; FRL-8798-01-R6]

### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Texas; Control of Emissions From Existing Other Solid Waste Incineration Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the CAA section 111(d)/129 state plan submitted by the State of Texas for sources subject to the Other Solid Waste Incineration Units (OSWI) Emission Guidelines (EG). The Texas OSWI plan was submitted to fulfill state obligations under CAA section 111(d)/129 to implement and enforce the requirements under the OSWI EG. The EPA is proposing to approve the state plan in part and amend the agency regulations in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2021-0517, at <https://www.regulations.gov> or via email to [ruan-lei.karolina@epa.gov](mailto:ruan-lei.karolina@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Karolina Ruan Lei, (214) 665-7346, *ruan-lei.karolina@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division - State Planning and Implementation Branch, (214) 665-7346, *ruan-lei.karolina@epa.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under CAA section 111(b) for new sources of the same type, and the EPA has established emission guidelines for such existing sources. CAA section 129 directs the EPA to establish standards of performance for new

sources (NSPS) and emissions guidelines (EG) for existing sources for each category of solid waste incinerator specified in CAA section 129. Under CAA section 129, NSPS and EG must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While NSPS are directly applicable to new sources (affected facilities), EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for controlling designated pollutants from designated facilities. Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a state. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant(s).

EPA promulgated the OSWI NSPS and EG on December 16, 2005, codified at 40 CFR part 60, subparts EEEE and FFFF, respectively (70 FR 74870, as amended at 71 FR 67806, November 24, 2006). Thus, states were required to submit plans for incinerators subject to the OSWI EG pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. OSWI means very small municipal waste combustion unit or an institutional waste incineration unit (IWI) as defined under 40 CFR 60.3078. The designated facilities to which the current OSWI EG apply are OSWI and certain air curtain incinerators (ACI)<sup>1</sup> that commenced construction on or before December 9, 2004, and were not modified or reconstructed on or after June 16, 2006, as specified in 40 CFR 60.2991 and 60.2992, with limited exceptions as provided under 40 CFR

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<sup>1</sup> These ACI subject to the OSWI EG at 40 CFR part 60, subpart FFFF are those ACI that do not fit the definition of an “OSWI” as they burn certain types of wastes. See 40 CFR 60.2994(b) and 40 CFR 60.3078.

60.2993. The EPA proposed revisions to the OSWI EG and NSPS on August 31, 2020 (85 FR 54178). When the EPA finalizes the revisions to the OSWI EG,<sup>2</sup> each state (and air quality control jurisdiction) will need to submit a negative declaration or plan, as applicable, for those sources subject to the requirements of the final revised OSWI EG.

In order to fulfill obligations under CAA sections 111(d) and 129, the Texas Commission on Environmental Quality (TCEQ) submitted a state plan for the control of emissions from sources subject to the OSWI EG for the State of Texas on May 18, 2009.<sup>3</sup> The Texas OSWI plan implements and enforces the applicable provisions under the OSWI EG at 40 CFR part 60, subpart FFFF, and additionally meets the relevant requirements of the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. It was subsequently discovered that 30 TAC §113.2313(3)(B) is inconsistent with the delegation of authority provisions of Title 40 CFR 60.2990(6) and 60.3020(c)(2). As discussed in more detail in the next section, on June 11, 2021, TCEQ submitted a commitment letter to the EPA to address a discrepancy in the Texas OSWI plan. A copy of the Texas submittal and the commitment letter is included in the docket for this rulemaking (Docket No. EPA-R06-OAR-2021-0517).<sup>4</sup>

## **II. Evaluation**

The EPA has evaluated the Texas OSWI plan to determine whether the plan meets applicable requirements from the OSWI EG at 40 CFR part 60, subpart FFFF, and the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. The EPA's detailed rationale and discussion on the Texas OSWI plan can be found in the Technical Support Document (TSD), located in the docket for this rulemaking.

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<sup>2</sup> The court ordered deadline to promulgate the final OSWI review is May 31, 2021. *Sierra Club v. Wheeler*, 330 F. Supp. 3d 407. (D.D.C. 2018).

<sup>3</sup> The Texas OSWI plan submitted by TCEQ does not cover sources located in Indian country.

<sup>4</sup> The May 18, 2009, Texas submittal also includes the CAA section 111(d)/129 plans addressing requirements for incinerators subject to the Small Municipal Waste Combustion units (SMWC) Emission Guidelines at 40 CFR part 60, subpart BBBB, and the Commercial and Industrial Solid Waste Incineration units (CISWI) Emission Guidelines at 40 CFR part 60, subpart DDDD. We are only addressing the Texas OSWI plan portion in this rulemaking.

Section 60.2983 of the OSWI EG addresses what must be included in state plan submittals.

These requirements include:

- (1) Inventory of affected incineration units, including those that have ceased operation but have not been dismantled.
- (2) Inventory of emissions from affected incineration units in the State.
- (3) Compliance schedules for each affected incineration unit.
- (4) For each affected incineration unit, emission limitations, operator training and qualification requirements, a waste management plan, and operating parameter requirements that are at least as protective as the emission guidelines contained in this subpart.
- (5) Stack testing, recordkeeping, and reporting requirements.
- (6) Transcript of the public hearing on the State plan.
- (7) Provision for State progress reports to EPA.
- (8) Identification of enforceable State mechanisms that the State selected for implementing the emission guidelines of this subpart.
- (9) Demonstration of the state's legal authority to carry out the sections 111(d) and 129 in the state plan.

Section 60.2983 of the OSWI EG also requires the state plan to demonstrate that it is at least as protective as the OSWI EG if it deviates from the format and content of the EG in 40 CFR part 60, subpart FFFF. The state plan must also follow the requirements of 40 CFR part 60, subpart B. The TSD goes into detail as to how the Texas OSWI plan meets these requirements. In evaluating the state's OSWI plan, the EPA considered the commitment letter submitted by the State. The letter addressed the component of the state plan that is inconsistent with the withheld authority provisions of the OSWI EG, specifically, the review of qualified operator accessibility status reports under 30 TAC §113.2313(3)(B), which corresponds to 40 CFR 60.3020(c)(2). In order to address the discrepancy, the TCEQ committed to forward any notification, report, or

request it receives pursuant to 30 TAC §113.2313(3) to the EPA without taking any other action, including approving or disapproving any request.

### **III. Proposed Action**

The EPA is proposing to partially approve the Texas OSWI plan submitted by TCEQ and amend 40 CFR part 62 in accordance with the requirements under sections 111(d) and 129 of the CAA. The EPA is proposing to find that the Texas OSWI plan, with the exception of 30 TAC §113.2313(3), is at least as protective as the Federal requirements provided under the OSWI EG, codified at 40 CFR part 60, subpart FFFF. Once approved by the EPA, the Texas OSWI plan will become federally enforceable.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and FFFF; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d)/129 state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 13, 2021.

**David Gray,**  
*Acting Regional Administrator, Region 6.*

